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No. 92-1384

Supreme Court U.S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1993

BARCLAYS BANK PLC
Petitioner,

vs.

FRANCHISE TAX BOARD,
AN AGENCY OF THE STATE OF CALIFORNIA
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of
the State of California in and for the Third Appellate District

SECOND SUPPLEMENTAL BRIEF OF PETITIONER

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SECOND SUPPLEMENTAL APPENDIX

Appendix R: Note of the Governments of the Member States of the European Communities (Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and United Kingdom) and the Governments of Australia, Austria, Canada, Finland, Japan, Norway, Sweden and Switzerland, October 14, 1993.

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SECOND SUPPLEMENTAL BRIEF OF PETITIONER

Pursuant to Rule 15.7, Petitioner Barclays Bank PLC files this Second Supplemental Brief to its Petition for Writ of Certiorari to inform this Court of a Note to the United States Secretary of State sent on October 14, 1993, from the twelve Member States of the European Communities (Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and United Kingdom) and the governments of Australia, Austria, Canada, Finland, Japan, Norway, Sweden and Switzerland (the "twenty countries"). A copy of the Note is contained in this Second Supplemental Brief as Appendix R.

The Note is important because:

1. The Note is submitted by the twelve Member States of the European Communities, joined by the other eight nations, which, as a group, comprise the main trading partners of the United States and the majority of its trade.
2. The twenty countries do not consider the California legislation as a resolution of the problem of worldwide combined reporting.
3. The twenty countries confirm their consistent position that worldwide unitary taxation is contrary to the internationally agreed arm's length principle embodied in the bilateral treaties of the United States and disruptive of international economic relations.
4. The twenty countries view a complete solution to the problem as requiring the establishment of the arm's length principle as the only legitimate basis to tax foreign companies in any state.

For all these reasons, this Note contradicts the suggestion by the United States in its *amicus curiae* brief that "an accommodation of state, national and international interests . . . has been reached in this issue" or that the voluntary action of a single state solves the problem. Am. U.S. Br. No. 92-1384 at 10.

Respectfully submitted,

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Appendix R

**British Embassy
 Washington**

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From The Ambassador

14 October 1993

The Honorable
 Warren M Christopher
 Secretary of State
 Department of State
 7th Floor
 Main State Department Building
 2201 C Street NW
 Washington DC 20520

Dear Mr. Secretary,

With the agreement of the other countries concerned, I have been asked to convey to you the attached note on unitary taxation on behalf of the governments of the member states of the European Community, and of Austria, Australia, Canada, Finland, Japan, Norway, Sweden and Switzerland.

Yours sincerely,

Robin Renwick

MESSAGE FROM THE SECRETARY OF STATE FOR
FOREIGN AND COMMONWEALTH AFFAIRS TO THE
HONORABLE WARREN CHRISTOPHER
THURSDAY, 14 OCTOBER 1993

UNITARY TAXATION

The 12 Member States of the European Communities: Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and United Kingdom; and the governments of Australia, Austria, Canada, Finland, Japan, Norway, Sweden and Switzerland ("the 20 countries") have the honour to refer to their brief for the Supreme Court of the United States in the case of *Barclays Bank plc v. Franchise Tax Board*, dated 22 April 1993.

The countries concerned note that, since that date, the State of California has passed legislation to modify its unitary tax law. While this legislation is an improvement, the countries concerned do not consider that the unitary tax problem is finally resolved. Worldwide unitary taxation is contrary to the internationally agreed arm's length principle embodied in the bilateral tax treaties of the United States and disruptive of international economic relations. A complete solution would require the arm's length principle to be established as the only legitimate basis of taxing foreign companies in any state.

The 20 countries regret therefore that, in his brief filed on 7 October 1993, the Solicitor General of the United States does not support the Barclays petition for a writ of *certiorari*.